

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Team # 4	CCRB Case #: 201306405	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/12/2013 7:35 PM	Location of Incident: Herkimer Street and Utica Avenue; 81st Precinct stationhouse	Precinct: 81	18 Mo. SOL 1/12/2015	EO SOL 1/12/2015	
Date/Time CV Reported Wed, 07/17/2013 11:54 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/17/2013 11:54 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Vaughan Ettienne	29839	928258	081 PCT
2. SGT Richard Mezzatesta	03513	930735	081 PCT
3. POM Jimmy Clerge	01541	945595	081 PCT
4. An officer			081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Shawn Marchlewski	02650	937022	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: At Herkimer Street and Utica Avenue in Brooklyn, an officer drew his gun.	
B.POM Vaughan Ettienne	Abuse: At the 81st Precinct stationhouse, PO Vaughan Ettienne strip-searched § 87(2)(b)	
C.POM Jimmy Clerge	Abuse: At the 81st Precinct stationhouse, PO Jimmy Clerge strip-searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

### Case Summary

On July 17, 2013, § 87(2)(b) filed this complaint with the Civilian Complaint Review Board (CCRB) via telephone on behalf of himself and his friend, § 87(2)(b). On July 12, 2013, at approximately 7:35 p.m., at Herkimer Street and Utica Avenue in Brooklyn, § 87(2)(b) and § 87(2)(b) were stopped in § 87(2)(b) car for an illegal license plate by officers from the 81<sup>st</sup> Precinct. § 87(2)(b) was released at the stationhouse with a summons for an open container of alcohol and § 87(2)(b) was arrested for forgery of a public record. The following allegations resulted from this incident:

#### **Allegation A: Abuse of Authority: At Herkimer Street and Utica Avenue in Brooklyn, an officer drew his gun.**

§ 87(2)(g)

#### **Allegation B: Abuse of Authority: At the 81st Precinct stationhouse, PO Vaughan Ettienne strip-searched § 87(2)(b)**

#### **Allegation C: Abuse of Authority: At the 81st Precinct stationhouse, PO Jimmy Clerge strip-searched § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

### Results of Investigation

#### Civilian Statements

##### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b).

#### CCRB Testimony

On July 23, 2013, § 87(2)(b) was interviewed at the CCRB (encl. 5b-5h). Any inconsistencies from his original complaint on July 17, 2013 (encl. 4a-4b), and the phone statement he provided on July 18, 2013 (encl. 5a), are summarized below.

On July 12, 2013, at 7:35 p.m., § 87(2)(b) was the front passenger in a green 1989

Mitsubishi Galant that was being driven by his friend and the owner of the car, § 87(2)(b). All windows on the vehicle except the front windshield were tinted (level of tints unknown), and the license plates were temporary. § 87(2)(b) was wearing black cargo pants (two pockets in the front, a side pocket on the left, a longer side pocket on the right and two back pockets), a gray tee-shirt, a fitted black and red baseball cap, and red and white sneakers. He had a cellphone and keys in his front left pocket, \$700.00 in his front right pocket, and his wallet in his rear right pocket. § 87(2)(b) was wearing sweatpants and a red tee-shirt and sneakers. § 87(2)(b) and § 87(2)(b) had come from visiting a friend at an apartment building located at Atlantic Avenue and Suydam Place and were headed to Kings Plaza Mall. Inside the car, § 87(2)(b) was holding his cell phone in one of his hands and § 87(2)(b) was holding a lidless plastic red cup with Hennessey inside that was almost finished. § 87(2)(b) was not intoxicated and this was the only alcoholic beverage he had that day.

While § 87(2)(b) and § 87(2)(b) were in traffic, three plainclothes officers identified via the investigation as PO Jimmy Clerge (described as a medium-skinned black male, 6'0" tall, slim body build, black hair in a Caesar cut, in his late 30s), PO Vaughn Ettienne (described as a black male, 5'8" tall, stocky body build, shaven bald head, in his 30s) and Sgt. Richard Mezzatesta (described as a white male, 6'0" tall, average body build, straight black hair, in his 30s), all of the 81<sup>st</sup> Precinct, pulled them over on Utica Avenue at Fulton Street in Brooklyn. The officers were using an unmarked, black Chevy Impala. When § 87(2)(b) heard the siren, he dropped the cup he was holding without bending his body and briefly turned his head to look over his shoulder. He made no other movement and did not reach toward or place anything inside his pants. Neither he nor § 87(2)(b) reached for anything.

PO Clerge (driver), PO Ettienne (front passenger) and Sgt. Mezzatesta (rear passenger behind driver) exited the vehicle without allowing § 87(2)(b) any time to pull over and while § 87(2)(b) car was in the middle of the street. PO Clerge had his gun drawn and was holding it with both hands when he went to the driver's window. § 87(2)(b) did not allege this in his original complaint and phone statement. PO Clerge did not point his gun at § 87(2)(b) but § 87(2)(b) did not know if he pointed his gun at § 87(2)(b). PO Ettienne went to the front passenger window and Sgt. Mezzatesta stayed at the rear of the vehicle, but they did not have their guns drawn.

PO Clerge told § 87(2)(b) to drop his phone and get out of the car. § 87(2)(b) did not know where or if § 87(2)(b) dropped his phone. PO Clerge said to PO Ettienne, § 87(2)(b) put something in his nuts. Take him out." PO Ettienne opened the front passenger door and led § 87(2)(b) out of the car by taking hold of his right arm. § 87(2)(b) was outside of the vehicle, too, but he did not see how this occurred. PO Clerge and PO Ettienne looked inside the car, but did not enter. PO Ettienne said, "And you're drinking liquor." § 87(2)(b) did not respond to this. § 87(2)(b) was asked if he had been drinking and he said he had not been.

PO Ettienne patted down § 87(2)(b) searched his pockets and collected his identification. During this time, § 87(2)(b) had no awareness of what was occurring with § 87(2)(b). PO Clerge and PO Ettienne repeatedly asked § 87(2)(b) what he had put into his pants and § 87(2)(b) answered, "Nothing." PO Clerge and PO Ettienne told § 87(2)(b) that he was going to the stationhouse and was going to be strip-searched. PO Ettienne handcuffed § 87(2)(b). At some point, the officers told § 87(2)(b) that they stopped the car because the temporary license plates were false, of which § 87(2)(b) had no knowledge.

PO Clerge escorted § 87(2)(b) to the patrol vehicle at the same time that PO Ettienne escorted § 87(2)(b) to the patrol vehicle. § 87(2)(b) did not know when PO Clerge re-holstered his gun, but it was not in his hands anymore when he escorted § 87(2)(b) to the patrol vehicle. § 87(2)(b) got inside first and sat behind the driver's seat and then § 87(2)(b) got in behind the front passenger seat. PO Clerge entered the front passenger's seat (although he was initially

the driver) and sat on his knees facing § 87(2)(b) and § 87(2)(b). PO Ettienne entered the driver's seat. Sgt. Mezzatesta entered § 87(2)(b)'s car and drove it away. § 87(2)(b) and § 87(2)(b) were transported to the 81<sup>st</sup> Precinct stationhouse. On the way, PO Clerge asked § 87(2)(b) if he had anything on him and § 87(2)(b) said he did not. PO Clerge said, "Oh, you're lying to me," and "Y'all want to lie, okay, I'm not helping y'all, I'm locking y'all up."

§ 87(2)(b) was escorted through a back door of the stationhouse and taken to the front desk that was down a hallway, to the right. A uniformed officer, identified via the investigation as Sgt. Shawn Marchlewski (described only as a male) was at the desk. A walkway behind the desk led to the cell area, next to which was a bathroom. PO Ettienne led § 87(2)(b) to the bathroom, which had one stall and no window. PO Ettienne closed the door and told § 87(2)(b) to drop his pants. § 87(2)(b) dropped his pants and his underwear to his ankles, but did not take them off completely. PO Ettienne told § 87(2)(b) to squat twice and § 87(2)(b) did so. He told § 87(2)(b) to put his pants back on and § 87(2)(b) did so. He did not find anything during this strip-search, which lasted approximately two minutes.

PO Ettienne led § 87(2)(b) to a bench outside the bathroom and told him to take off his shoelaces. § 87(2)(b) had been sitting on the bench untying his shoelaces for less than five minutes when PO Clerge approached him and told him to get up. PO Clerge and PO Ettienne escorted § 87(2)(b) to the back of the stationhouse to a different holding cell area. All the cells were empty, there were no windows nearby and there was no one else present. In a hallway in front of the cells, PO Clerge and PO Ettienne told § 87(2)(b) to take his clothes off. § 87(2)(b) took his pants, underwear and socks off completely, so that he was only wearing his tee-shirt. PO Ettienne told § 87(2)(b) to squat and he did so. He told § 87(2)(b) to turn his underwear and pants inside-out, and § 87(2)(b) did so. Nothing was found during this strip-search, which took approximately five minutes.

PO Clerge and PO Ettienne escorted § 87(2)(b) to the same bench he was sitting on before, where they spoke to him for approximately ten to fifteen minutes. PO Clerge asked § 87(2)(b) what he had put into his pants and § 87(2)(b) said that he did not put anything in his pants. PO Clerge said, "I could have shot you." § 87(2)(b) said, "I don't know what you're talking about. I didn't put nothing in my pants. You didn't find nothing on me. I don't know what you're talking about." § 87(2)(b) was escorted to a cell next to the bathroom that was also occupied by § 87(2)(b) and three other individuals.

After a short time, PO Ettienne handed § 87(2)(b) Summons § 87(2)(b) for an open container of alcohol and he was released. He thought that § 87(2)(b) was arrested for a warrant and he went to § 87(2)(b) for a day and a half before being released.

**Victim:** § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b).

**Phone Statement**

On July 24, 2013, § 87(2)(b) provided a phone statement (encl. 6a). Any inconsistencies from § 87(2)(b)'s statements and any additional information are noted below.

After § 87(2)(b) stopped his car, an officer identified via the investigation as PO Clerge (described as a black male, muscular body build, bald, in his late 20s to early 30s) approached the car with his gun drawn. PO Clerge was with officers identified via the investigation as PO Ettienne (described as a black male, muscular body build, bald, in his late 20s to early 30s) and Sgt. Mezzatesta (described as a light-skinned Hispanic male, very thin body build, black hair, in his late 20s to early 30s).

After PO Clerge told § 87(2)(b) to drop his phone, he looked at § 87(2)(b) and asked him, "What you doing?" and "What you got over there?" PO Clerge kept asking § 87(2)(b)

§ 87(2)(b) about what he had and both § 87(2)(b) and § 87(2)(b) said they had nothing. PO Clerge told PO Ettienne to take § 87(2)(b) out of the car. PO Ettienne took § 87(2)(b) out of the car and placed him in handcuffs. § 87(2)(b) was told to stand still and § 87(2)(b) responded that he was standing still. Before § 87(2)(b) and § 87(2)(b) were transported to the stationhouse, PO Ettienne looked inside the vehicle. § 87(2)(b) did not see where PO Ettienne looked, but knew he looked in the cup holder of the center console because he was holding § 87(2)(b) debit card, which § 87(2)(b) had placed there.

§ 87(2)(b) and § 87(2)(b) were taken to the 81<sup>st</sup> Precinct stationhouse. § 87(2)(b) was charged for an earlier incident for which there was a warrant for his arrest and § 87(2)(b) was released. PO Clerge asked § 87(2)(b) about his license plate and § 87(2)(b) explained that he was selling the car. PO Clerge did not tell § 87(2)(b) that he was stopped for his license plate.

On July 24, 2013, § 87(2)(b) scheduled his CCRB appointment for August 8, 2013, but he did not appear for this appointment and did not call the undersigned investigator ahead of time to cancel or reschedule. On August 8, 2013, § 87(2)(b) rescheduled his CCRB appointment for August 13, 2013, but he also did not appear for this appointment and did not call the undersigned investigator ahead of time to cancel or reschedule. On April 4, 2014, a search of the New York City Department of Corrections website revealed that § 87(2)(b) was not incarcerated. On May 14, 2014, a LexisNexis search was conducted that yielded no working phone numbers and no new address. Between May 13, 2014, and June 6, 2014, five attempts were made to call him, but the phone number was out of service each time. On May 16, 2014, and May 21, 2014, two please call letters were sent to him and they were not returned by the United States Postal Service. To date, he has not contacted the undersigned investigator.

### **NYPD Statements:**

#### **Subject Officer: PO VAUGHAN ETTIENNE**

- *PO Ettienne is a § 87(2)(b).*
- *On July 12, 2013, PO Ettienne was on duty from 11:25 a.m. until 8:00 p.m., was assigned to Anti-Crime with Sgt. Mezzatesta, was dressed in plainclothes, and was assigned to an unmarked black Chevy Impala, number 8131.*

### **Memo Book**

PO Ettienne made the following notations in his memo book (encl. 8a-8b): At 7:30 p.m., one was placed under arrest for criminal possession of a forged instrument ("CPFI").

### **Summons**

PO Ettienne issued Summons § 87(2)(b) to § 87(2)(b) for an open container of alcohol in public (encl. 8c).

### **Arrest Report**

PO Ettienne generated § 87(2)(b) arrest report, number § 87(2)(b) (encl. 8d-8f), in which he stated that § 87(2)(b) was observed operating a blue Mitsubishi with a forged Florida license plate without a license or registration. § 87(2)(b) top charge was forgery of a public record in the second degree.

### **CCRB Testimony**

On September 20, 2013, PO Ettienne was interviewed at the CCRB (encl. 8i-8l).

On July 12, 2013, at 7:35 p.m., PO Ettienne, the front passenger, was on patrol with Sgt. Mezzatesta, the driver, when he observed a Mitsubishi with very darkly tinted windows and a paper license plate affixed to the rear that was heading southbound on Utica Avenue at Fulton Street. When the patrol car pulled up behind the Mitsubishi, PO Ettienne determined via a visual inspection that the license plate was forged. This inspection, informed by previous training and experience, revealed that some of the numbers on the license plate appeared to be altered.

The lights and sirens of the patrol vehicle were triggered, but the Mitsubishi never pulled over as it was in heavy traffic. PO Ettienne and Sgt. Mezzatesta exited the patrol vehicle simultaneously. Sgt. Mezzatesta approached the driver's side and PO Ettienne approached the passenger side of the vehicle. PO Ettienne did not know what, if anything, Sgt. Mezzatesta was holding as he approached the vehicle and never saw him draw his firearm at any time. The driver of the Mitsubishi, later identified as § 87(2)(b) was considered under arrest for the forged license plate. In less than a minute from when the stop was conducted, two other officers (he could not recall who) responded in a patrol vehicle (PO Ettienne could not recall the description of vehicle). PO Ettienne said the sergeant on scene would usually be the one to call for another unit, but he did not have an independent recollection of this.

The darkly tinted back and side windows of the vehicle, which PO Ettienne visually estimated to be higher than 25%, made him fearful for the officers' safety because he could not see if anyone was in the back of the car. PO Ettienne could not recall if any conversation about the tinted windows occurred at any time between him and Sgt. Mezzatesta. PO Ettienne was at the front passenger window when he observed the passenger, later identified as § 87(2)(b) place a plastic cup in the vehicle's cup holder with his left hand, spilling some of the contents on his lap and center console. He then immediately reached into the front of his waistband with both hands. PO Ettienne initially said that he could not tell whether § 87(2)(b) was pushing something in or pulling something out of his pants, but later said he believed § 87(2)(b) was trying to hide something there, although he did not know what. He could not recall how much of the § 87(2)(b)'s hands were concealed when they were inside the waistband. He drew his firearm because the movement into the waistband made him concerned for the officers' safety and said to Sgt. Mezzatesta, "He's reaching." PO Ettienne did not say that § 87(2)(b) was hiding something "in his nuts," and heard no other officer say this. As Sgt. Mezzatesta was on the other side of the vehicle, PO Ettienne could not see what was occurring with him and § 87(2)(b).

PO Ettienne pointed his firearm at § 87(2)(b)'s center mass and ordered him to show his hands, which he did. He did not see any other officer draw their firearm during this incident. PO Ettienne opened the passenger's door and re-holstered his firearm because he could see that § 87(2)(b)'s hands were empty. He ordered § 87(2)(b) out of the vehicle and Sgt. Mezzatesta also removed § 87(2)(b) from the vehicle. The odor of alcohol emanated strongly from § 87(2)(b)'s clothing and the center console.

PO Ettienne handcuffed § 87(2)(b) and frisked him on his waistband, given the movements he observed, but he did not feel any hard object within the waistband. He then searched § 87(2)(b)'s pockets. He wanted to take § 87(2)(b) back to the stationhouse to ensure no weapon was on his person, as he was not completely satisfied with the frisk and search conducted on the scene. § 87(2)(b) was also placed in a patrol vehicle, but PO Ettienne could not recall which one.

PO Ettienne went to the Mitsubishi and retrieved the cup that § 87(2)(b) had placed in the cup holder. He confirmed that alcohol had been inside the cup. He then went to the stationhouse, but he could not recall if he went in his patrol vehicle or if he drove the Mitsubishi. PO Ettienne could not recall an officer sitting on his knees to observe § 87(2)(b) and § 87(2)(b) on the way to the stationhouse.

At the stationhouse, PO Ettienne spoke to § 87(2)(b) at the front desk. He asked § 87(2)(b)

§ 87(2)(b) if he put anything in his waistband, and the response was no. He then conducted a search at the front desk of § 87(2)(b)'s waistband and all his pockets. He was then satisfied that § 87(2)(b) had no contraband or weapon. § 87(2)(b) was searched further, as it is protocol for all items on his person that could represent a means of escape or a threat to himself or others, such as a belt and shoelaces, be removed. PO Ettienne pulled at § 87(2)(b)'s waistband and asked him to lift his shirt to ensure nothing was being hidden. § 87(2)(b) was then secured in a cell and no further search of his person was conducted. § 87(2)(b) was not strip-searched by any officer including himself. If § 87(2)(b) had been strip-searched, Sgt. Mezzatesta would have authorized this. § 87(2)(b) was released with a summons for an open container of alcohol.

**Subject Officer: SGT RICHARD MEZZATESTA**

- *Sgt. Mezzatesta is a § 87(2)(b).*
- *On July 12, 2013, Sgt. Mezzatesta was on duty from 10:46 a.m. until 4:05 a.m. the next day. From 7:30 p.m. onward, he was assigned to Anti-Crime with PO Ettienne, was dressed in plainclothes and using an unmarked black Chevy Impala, number 8131.*

**Memo Book**

Sgt. Mezzatesta had no entries in his memo book regarding this incident (encl. 9a-9b).

**CCRB Testimony**

On September 27, 2013, Sgt. Mezzatesta was interviewed at the CCRB (encl. 9c-9e).

On July 12, 2013, at 7:35 p.m., Sgt. Mezzatesta was the front passenger of the patrol car, driven by PO Ettienne, who was travelling northbound on Utica Avenue. No other officer was inside the patrol vehicle. At Herkimer Street, a vehicle with two occupants, identified as § 87(2)(b) the driver, and § 87(2)(b) the front passenger, drove southbound. Due to the traffic on the street causing vehicles to travel slowly at five or ten miles per hour, he and PO Ettienne observed § 87(2)(b) drinking something out of a white, Styrofoam cup as the vehicle passed. This is what initially drew Sgt. Mezzatesta's attention to the vehicle. After the vehicle passed, Sgt. Mezzatesta turned his head and observed a temporary license plate affixed to the rear of the vehicle that appeared forged.

PO Ettienne made a U-turn and pulled over the vehicle. Sgt. Mezzatesta exited immediately and approached the passenger's side of the civilian vehicle while PO Ettienne exited and approached the driver's side. PO Ettienne stood parallel to the vehicle while Sgt. Mezzatesta stood further toward the rear. The officers held nothing in their hands as they approached. Sgt. Mezzatesta did not draw his gun, and did not see PO Ettienne draw his, but noted he would not have seen it as he was on the opposite side of the car. PO Ettienne said nothing to Sgt. Mezzatesta about drawing his gun.

PO Ettienne told Sgt. Mezzatesta that § 87(2)(b) was grabbing at something in his waistband, which made Sgt. Mezzatesta concerned for the officers' safety. Sgt. Mezzatesta then moved up to the front passenger's door. He did not at any time observe § 87(2)(b) reach for his waistband. He opened the passenger's door and could not recall if § 87(2)(b) had anything in his hands. He instructed § 87(2)(b) to exit the vehicle, at which time he smelled alcohol on § 87(2)(b)'s breath. Besides the alcohol, he could not recall anything else notable about § 87(2)(b) and did not receive any indication that § 87(2)(b) was concealing anything. Nothing on § 87(2)(b)'s person made him concerned for the officers' safety that he could recall, and no bulges were observed on his person.

Sgt. Mezzatesta handcuffed § 87(2)(b) and frisked him because he was being taken into custody. § 87(2)(b) was considered under arrest for an open container and the frisk was pursuant

to this. He frisked § 87(2)(b)'s waistband, but could not recall any other area he may have frisked. He could not recall finding anything as a result of this frisk. He could not recall if he reached into any of § 87(2)(b)'s pockets.

Sgt. Mezzatesta escorted § 87(2)(b) to the patrol vehicle. PO Ettienne had also handcuffed § 87(2)(b) and escorted him to the patrol vehicle. Both prisoners were placed in the backseat and PO Clerge was called, but Sgt. Mezzatesta could not recall by whom. Sgt. Mezzatesta retrieved the Styrofoam cup from the center console of the civilian vehicle from which § 87(2)(b) had been drinking. It was lidless, half full and smelled of alcohol. Sgt. Mezzatesta searched the car in reachable areas for any weapons, but found nothing.

PO Clerge arrived to the scene to help transport the prisoners to the stationhouse, as PO Ettienne could not do this alone. Another officer dropped PO Clerge off, but Sgt. Mezzatesta could not recall who. Sgt. Mezzatesta did not know whether PO Ettienne or PO Clerge drove the patrol vehicle. Sgt. Mezzatesta drove § 87(2)(b) vehicle back to the 80<sup>th</sup> Precinct stationhouse.

Sgt. Mezzatesta was present when § 87(2)(b) and § 87(2)(b) arrived at the stationhouse. PO Ettienne escorted the prisoners to the cells in the back of the stationhouse. § 87(2)(b) was released with a C-summons for the open container of alcohol. § 87(2)(b) was charged with possession of a forged instrument.

Sgt. Mezzatesta did not ask § 87(2)(b) about what he was concealing when he made the movements that PO Ettienne observed and no further investigation was conducted. Sgt. Mezzatesta believed that if § 87(2)(b) who was wearing Adidas gym pants, had placed something in his waistband, it would have fallen out. Besides the aforementioned searches, § 87(2)(b) was not searched further and was not strip-searched. Sgt. Mezzatesta received no information about § 87(2)(b) being strip-searched.

#### **Subject Officer: PO JIMMY CLERGE**

- *PO Clerge is a § 87(2)(b).*
- *On July 12, 2013, PO Clerge was on duty at the time of the incident, but recorded in his memo book that he worked from 8:25 a.m. until 4:44 p.m. He was assigned to Anti-Crime with Sgt. Mezzatesta and PO Ettienne, was dressed in plainclothes and was not assigned to a motor vehicle.*

#### **Memo Book**

PO Clerge had no memo book entries regarding this incident, or any actions he took on the day of the incident (encl. 10a-10c). Only his beginning of tour and end of tour are noted.

#### **CCRB Testimony**

On October 15, 2013, PO Clerge was interviewed at the CCRB (encl. 10d-10f). Inconsistencies with Sgt. Mezzatesta's testimony and any additional information are included below.

On July 12, 2013, at 7:35 p.m., PO Clerge was performing administration duties at the precinct stationhouse when he received the call from Sgt. Mezzatesta to help transport § 87(2)(b) and § 87(2)(b). Sgt. Mezzatesta did not say anything else in regard to the incident. PO Clerge could not recall what vehicle he used to go to the location, but he was by himself.

PO Clerge did not conduct the stop of § 87(2)(b) car. No other officer was assigned to Anti-Crime on this day besides himself, Sgt. Mezzatesta and PO Ettienne. PO Clerge was informed that § 87(2)(b) said three officers stopped § 87(2)(b) car and one of them was described as a medium-complexioned black male standing 6'0" tall with a Caesar-style haircut



and in his late 30s. PO Clerge said this description matched his physicality, but he was not present for the car stop. PO Clerge did not draw his firearm at any point during this incident and did not see any other officer do so.

When PO Clerge arrived to the scene, other uniformed officers (PO Clerge could not recall how many and did not know who they were) were also present. Besides Sgt. Mezzatesta's and PO Ettienne's unmarked car, other marked cars (PO Clerge could not recall how many) were also there. § 87(2)(b) was handcuffed in a standing position next to the unmarked patrol vehicle with PO Ettienne. PO Clerge could not recall what Sgt. Mezzatesta was doing. PO Clerge placed § 87(2)(b) in the patrol vehicle he had arrived in, but did not know in what car § 87(2)(b) was placed. PO Ettienne said to PO Clerge, "Keep an eye on § 87(2)(b) because he was trying to shove something down his pants." PO Clerge did not know what § 87(2)(b) was attempting to put inside his pants and PO Ettienne mentioned nothing further about § 87(2)(b).

PO Clerge did not observe anything out of the ordinary about § 87(2)(b) and he saw no bulges or anything on his person that made him feel unsafe. PO Clerge frisked § 87(2)(b) on the waistband, upper body and over all his pants pockets for safety purposes, as he was going to be placed in a patrol vehicle. He did not reach inside any of § 87(2)(b)'s pockets because a search of his person had already been conducted (he did not know by whom).

An officer (PO Clerge could not recall who) drove § 87(2)(b) vehicle to the 81<sup>st</sup> Precinct stationhouse. PO Clerge sat in the backseat of the patrol vehicle he arrived in with § 87(2)(b) and another officer (he could not recall who) drove it to the 81<sup>st</sup> Precinct stationhouse. The front passenger seat was empty. Nothing happened on the way to the stationhouse. PO Clerge did not see § 87(2)(b) make any suspicious movements, nor did he see him reach for his pants in any way. He did not speak to § 87(2)(b) on the way to the stationhouse and never asked him if he was concealing anything.

At the stationhouse, PO Clerge lodged § 87(2)(b) in a cell after he went to the front desk. He did not retrieve § 87(2)(b) from the cell for any reason and did not know of any other officer doing this before his release. He did not search § 87(2)(b) any further and did not know if any other officer did this. He did not recommend that § 87(2)(b) be strip-searched. He did not strip-search § 87(2)(b) and did not know if any other officer did this. § 87(2)(b) was eventually released with a summons for an unknown charge, but PO Clerge was not present for this and thought he was in the stationhouse office.

**Witness Officer: SGT SHAWN MARCHLEWSKI**

- Sgt. Marchlewski is a § 87(2)(b)
- On July 12, 2013, Sgt. Marchlewski was on duty from 2:50 p.m. until 11:47 p.m., was assigned to the desk of the 81<sup>st</sup> Precinct, and was dressed in uniform.

**Memo Book**

Sgt. Marchlewski had no entries in his memo book regarding the incident, but he was not required to make any as a Desk Sergeant (encl. 11a-11b).

**CCRB Testimony**

On January 29, 2014, Sgt. Marchlewski was interviewed at the CCRB (encl. 11c-11d). He could not recall the incident after viewing photographs of § 87(2)(b) and § 87(2)(b) being told details about the incident, viewing the command log, and § 87(2)(b)'s summons. Strip-searches are conducted in the back area where the cells are, which is far from the front desk. He described the bathroom for prisoners as a room with a single stall with a sink and no windows.

## **NYPD Documents**

### **Command Log**

The 81<sup>st</sup> Precinct command log for July 12, 2013 (encl. 12a), notes that § 87(2)(b) and § 87(2)(b) arrived at 5:00 p.m. and no strip-search was noted for either.

§ 87(2)(b)

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• § 87(2)(b)

### **Status of Civil Proceedings**

Neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the City of New York as of November 13, 2013, with regard to the incident (encl. 14a).

§ 87(2)(b)

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### **Civilians CCRB History**

This is the first CCRB complaint filed by § 87(2)(b) and involving § 87(2)(b) (encl. 3a-3b).

### **Subject Officers CCRB History**

- PO Clerge has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 2a).
- Sgt. Mezzatesta has been a member of the service for eleven years and there are no substantiated CCRB allegations against him (encl. 2b).
- PO Ettienne has been a member of the service for twelve years and there are the following substantiated CCRB allegations against him (encl. 2c-2d): In CCRB 200713590, the Board recommended charges for a frisk and a stop. The NYPD issued instructions for the frisk and applied no disciplinary action for the stop.

## **Conclusion**

### **Identification of Subject Officers**

- § 87(2)(b) and § 87(2)(b) said that three officers conducted the stop of the car they occupied and one of these officers drew his gun. In his verified statement, § 87(2)(b)

described this officer as a medium-skinned black male, 6'0" tall, slim body build, black hair in a Caesar cut, in his late 30s, and PO Clerge acknowledged that this accurately described his physicality. PO Clerge said he did not, however, arrive to the scene until after the car stop was conducted and denied drawing his gun. This was corroborated by Sgt. Mezzatesta. PO Ettienne also said that only he and Sgt. Mezzatesta conducted the car stop and he drew his gun. As the officers' testimonies are consistent in regard to only Sgt. Mezzatesta and PO Ettienne conducting the car stop and as PO Ettienne acknowledged drawing his gun and PO Clerge denied this, the identity of the officer who drew his gun could not be confirmed. Therefore, Allegation A has been pled against an officer.

- § 87(2)(b) alleged that at the stationhouse, the two black officers who were present for the car stop and transported him to the stationhouse, PO Clerge and PO Ettienne, conducted a strip-search of his person. While the officers' testimonies differ as to who else was present for the transportation of § 87(2)(b) to the stationhouse, they both acknowledged being present for this. Therefore, Allegations B and C have been pled against them.

### **Investigative Findings and Recommendations**

#### **Allegation A: Abuse of Authority: At Herkimer Street and Utica Avenue in Brooklyn, an officer drew his gun.**

§ 87(2)(b) who acknowledged drinking Hennessey out of a cup at the time of the incident, alleged that PO Clerge drew his gun and approached the driver's side of the car, where § 87(2)(b) was sitting. While the officers approached, § 87(2)(b) dropped the cup he was holding without bending his body and briefly turned his head to look over his shoulder, but he did not reach toward or place anything in his pants. PO Clerge then told PO Ettienne that § 87(2)(b) had "put something in his nuts." § 87(2)(b) said the license plates on § 87(2)(b) car were temporary ones and the car had tinted windows (he did not know the tint level). In his phone statement, § 87(2)(b) said that his license plates were temporary and an officer approached the car with his gun drawn. He said that the officer who had his gun drawn asked § 87(2)(b) what he was doing and, "What you got over there?"

PO Clerge said he was not present for the car stop, and did not arrive until Sgt. Mezzatesta called him to help transport § 87(2)(b) and § 87(2)(b) after their apprehension. He denied drawing his gun or seeing any other officer do this during the incident. Sgt. Mezzatesta said he noticed the forged license plate on the car before it was stopped. He said he approached the driver's side during the stop and PO Clerge was called afterwards to help transport § 87(2)(b) and § 87(2)(b). He denied drawing his gun or seeing any other officer with their gun drawn. PO Ettienne said that only he and Sgt. Mezzatesta were present for the car stop and other officers, he could not recall who, arrived later to help transport § 87(2)(b) and § 87(2)(b). He said he noticed the forged license plate and darkly tinted windows on the car before it was stopped and the tinted windows made him fearful for the officers' safety because he could not see the occupants. He said he approached the passenger's side of the car where § 87(2)(b) was sitting, at which time he drew his gun, pointing it at § 87(2)(b)'s center mass, because § 87(2)(b) had reached inside his pants after dropping his cup, as though he were concealing something. When PO Ettienne saw that § 87(2)(b)'s hands were empty, he re-holstered his gun.

Officers may draw their firearms and point them at other persons when the officers have a reasonable fear for their own or another person's safety, Police Department v. Gliner, OATH Index No. 955/00 (September 6, 2000) (encl. 1a-1t).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation B: Abuse of Authority: At the 81st Precinct stationhouse, PO Vaughan Ettienne strip-searched § 87(2)(b)**

**Allegation C: Abuse of Authority: At the 81st Precinct stationhouse, PO Jimmy Clerge strip-searched § 87(2)(b)**

§ 87(2)(b) said that at the scene of the car stop, PO Clerge accused him of placing something in his pants. At the stationhouse, PO Ettienne strip-searched him in a bathroom by instructing him to drop his pants and underwear to his ankles and squat, which he did. After he dressed and was placed on a bench to remove his shoelaces, both PO Clerge and PO Ettienne took him to the holding cells in the back of the stationhouse, where he was strip-searched for a second time. The officers instructed him to take off every item of clothing except his tee shirt and squat, which he did.

PO Ettienne and PO Clerge denied strip-searching § 87(2)(b) and said besides the procedural searches that take place at the stationhouse, he was not searched further. PO Clerge said he did not arrive to the scene until after the car stop was conducted. PO Ettienne said that he saw § 87(2)(b) place something inside his pants at the scene of the car stop, of which he informed Sgt. Mezzatesta, who corroborated this. PO Ettienne said he was not satisfied with the search of § 87(2)(b) at the scene, so he was taken to the stationhouse. He said he was satisfied that § 87(2)(b) had nothing on his person after he was searched at the front desk of the stationhouse. He released § 87(2)(b) from the stationhouse with a summons for an open container. Sgt. Mezzatesta said he did not hear of § 87(2)(b) being strip-searched and to his knowledge, he was not strip-searched. Sgt. Marchlewski, who was assigned to the desk when § 87(2)(b) arrived, could not recall the incident and did not recognize § 87(2)(b) from his photograph.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)